

United States Senate
WASHINGTON, DC 20510-3704

February 4, 2005

The Honorable Theodore R. Kulongoski
Governor of Oregon
State Capitol
Salem, OR 97301-4047

Dear Governor Kulongoski:

Thank you for your recent letter indicating that Oregon intends to join the plaintiffs in a lawsuit over the 2004 biological opinion for the Federal Columbia River Power System (FCRPS). I appreciate being informed of your position, and I believe we share the common goal of restoring naturally-spawning salmon runs to abundant, fishable levels. I must disagree, however, that threatening to sue to force draconian changes represents the best interests of the citizens of the state.

Independent analyses of your proposal indicate that, for much of the year, navigation above John Day Dam would be eliminated. This will devastate Oregon's inland ports and agricultural producers, not to mention the Port of Portland. It also seems to contradict your own "Connect Oregon" proposal that would issue bonds to increase cargo traffic on the Columbia River. The state's proposal to amend the biological opinion would also eliminate irrigation pumping from the John Day pool, and would reduce BPA's power revenues by at least \$100 million annually. The drawdown of John Day reservoir was evaluated and rejected during the Clinton Administration.

I would urge you not to pursue additional costly and divisive litigation of the revised biological opinion. Rather, I hope you will focus the efforts of state agencies toward the completion of those Oregon sub-basin plans for salmon that have been deemed inadequate by the Northwest Power Planning Council. These sub-basin plans will serve as the foundation for the subsequent development of much-needed salmon recovery plans by NOAA Fisheries. I remain committed to ensuring that these recovery plans move forward.

In addition to continuing hydro operations of the FCRPS to benefit salmon, the 2004 biological opinion provides a firm commitment by the federal action agencies to install surface bypass structures to improve juvenile fish passage at all the mainstem dams with passage. All of these activities meet the judge's requirement that actions be reasonably certain to occur.

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By contrast, most of the modifications to the new biological opinion you are proposing fail to meet the judge's standard of having undergone consultation or of being reasonably certain to occur. In its *Amicus* memo challenging the 2000 biological opinion, the State of Oregon wrote:

“The challenged biological opinion fails to satisfy the standards of Section 7 as construed by the courts. As discussed below, it relies on actions for which necessary funding is unavailable, actions for which the agencies lack authority, and actions that are not reasonably certain to occur because of the lack of binding agreements.”

I would argue that many of your latest proposals do not meet the standards that Oregon has sought for Section 7 consultations in the past. These include: Canada treaty storage and Canada non-treaty storage modifications; installation of two turbines at Mica and Revelstoke dams to provide additional flows; and billions of federal dollars to mitigate the impacts of drawing down the John Day reservoir.

For the last four years, salmon have returned to the Columbia River in record numbers. These returns reflect not only improved ocean conditions, but the significant federal investment made each year in mitigation and salmon recovery.

During my tenure, I have consistently joined with my Northwest congressional colleagues to secure billions of dollars for mitigation of the Corps' dams, the Pacific coastal salmon recovery fund, capital improvements in the FCRSP, and to ensure credit toward BPA's Treasury payments for foregone power revenues. In addition, I have championed legislation to ensure that the Bureau of Reclamation could meet its obligations under the biological opinion. I will continue to press for these salmon recovery funds, and would ask that you join the Northwest delegation and the other basin states to present unified support for the more than \$600 million in spending and foregone power revenues directed at salmon recovery each year.

The new biological opinion maintains past hydro operations, such as spill, that the State of Oregon has previously indicated were important. Rather than continue to litigate over the biological opinion, I would urge the state to join with NOAA Fisheries to complete the recovery plans that will ultimately lead us to abundant naturally-spawning salmon runs in Oregon's watersheds.

Sincerely,



Gordon H. Smith
United States Senate